



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ida Faye Robinson - Relocation Expenses -
Retransfer to Former Duty Station Within One Year

File: B-234476

Date: April 23, 1990

DIGEST

1. Employee was transferred from Columbus to Dayton and then back to Columbus within 1 year. She sold her Columbus residence within 1 year from effective date of first transfer and prior to official notice of retransfer. Subsequent transfer does not extinguish the right to reimbursement created by the initial transfer. Employee is entitled to reimbursement of residence sale expenses incident to initial transfer to Dayton. Further, employee is entitled to residence purchase expenses incident to the retransfer to Columbus.
2. A transferred employee claimed temporary quarters subsistence expenses for herself for 4 days when inclement weather prevented her from returning to her residence at old duty station which she had not vacated in order to allow daughter to complete school session. Her claim is disallowed since she had not vacated her old residence as required by the Federal Travel Regulations before temporary quarters expenses may be reimbursed.
3. Employee whose old and new residences were in Columbus occupied temporary quarters for 30 days in connection with successive transfers. She acquired a new permanent residence but was unable to occupy new residence immediately because of a holdover provision allowing the sellers to remain in possession. Paragraph C13006 of the Joint Travel Regulations, volume 2 (FTR para. 2-5.2h), which generally prohibits payment of TQSE for short distance transfers, is not a bar to payment since this provision was not intended to apply to situations where the old residence sale is under one transfer order and the new residence purchase is under another order as the timing of the sale and purchase are no longer within the employee's control.

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DECISION

The Acting Chief, Accounting and Finance Division, Office of Comptroller, Defense Logistics Agency (DLA), forwards a request for advance decision, concerning the claim of Ms. Ida Faye Robinson for relocation expenses incurred incident to two permanent changes of station. As stated below, we hold that the employee may be reimbursed for certain of these expenses.

BACKGROUND

Ms. Robinson, an employee of the Defense Logistics Agency Finance Center, Columbus, Ohio, was authorized a permanent change of station (PCS) from Columbus to the Defense Electronics Supply Center, Dayton, Ohio, with a reporting date of January 24, 1988. Ms. Robinson commuted from her Columbus area residence to Dayton in order to facilitate her daughter's completion of the school session. However, Ms. Robinson had to use temporary housing on 4 days during her commuting period because of inclement weather. On June 5, 1988, Ms. Robinson entered into a sales contract on her Columbus residence. The sale was closed on July 8, 1988, and she vacated the premises on July 23, 1988.

In the meantime, by letter dated June 16, 1988, the Director, DLA notified all employees of DLA's intention to consolidate central payment operations in Columbus over the next 3 years. This letter advised affected employees that they would have the opportunity to transfer to the central site, but it was not a specific notice for any employee. In consideration of this notice and other informal information concerning a possible reassignment back to Columbus, Ms. Robinson signed an agreement on July 13 to purchase a new house in Columbus contingent upon her receiving written notification of her reassignment back to Columbus.

On July 22, 1988, Ms. Robinson was formally notified that she had been selected for a position in Columbus, with a reporting date of August 8, 1988. She accepted the position and on July 25, 1988, a PCS order was issued transferring Ms. Robinson back to Columbus and authorizing real estate expenses, 60 days temporary quarters subsistence expenses (TQSE), and shipment and 90 days temporary storage of household goods. On July 25, 1988, Ms. Robinson finalized the contract for the purchase of a house in Columbus with a closing date of August 11, 1988. However, due to a holdover provision in the contract of sale allowing the sellers to remain in possession until August 22, 1988, the new residence was not available for occupancy until that time.

Ms. Robinson moved out of her old residence and placed her household goods in storage on July 23, 1988. She stayed in temporary quarters from July 23 to August 22, 1988, when she moved into her new residence.

Because the two sets of orders were issued within 1 year and because of the close proximity of the two duty stations, DLA has requested clarification as to what expenses are allowable.

OPINION

Authorization of Relocation Expenses

The DLA notes that paragraph C4100-3 of volume 2 of the Joint Travel Regulations (May 1, 1988), implementing 5 U.S.C. § 5724a, states that a transfer at government expense is not authorized within 12 months of the employee's most recent PCS unless the order-issuing official certifies that the proposed transfer is in the interest of the government, an equally qualified employee is not available within the commuting area of the component concerned, and the losing component agrees to the transfer. The record shows that these regulatory requirements were met and that the proper certifications were made. Therefore, payment of allowable relocation expenses for Ms. Robinson's transfer from Dayton back to Columbus is authorized.

Real Estate Expenses

The statutory provisions governing reimbursement of residence transaction expenses of transferred employees are contained in 5 U.S.C. § 5724a (1982). The DLA refers to our decision in Warren L. Shipp, 59 Comp. Gen. 502 (1980), as a basis for questioning payment of real estate expenses. The Shipp case held that once an employee is notified of a transfer back to a former duty station, the government's obligation to reimburse real estate expenses is limited to those already incurred or those which cannot be avoided. We do not perceive any conflict between the reimbursement to Ms. Robinson for her real estate expenses and the holding in Shipp. As indicated above, Ms. Robinson entered into a contract to sell her house in Columbus on June 5, 1988, and settled on July 8. She did not receive any official notice upon which she could rely of a transfer back to Columbus until July 22, 2 weeks later. Thus, the rule in Shipp does not limit the government's obligation to reimburse real estate expenses to Ms. Robinson.

TQSE During January and February 1988

The regulations pertaining to temporary quarters subsistence expenses are contained in chapter 2, part 5 of the Federal Travel Regulations (FTR) (Supp. 10, March 13, 1984), incorp. by ref., 41 C.F.R. § 101-7.003 (1984). "Temporary quarters" is defined in FTR, para. 2-5.2c as "Lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized." (Emphasis added.)

Ms. Robinson has claimed temporary quarters subsistence expenses for herself for 4 days in January and February 1988 when inclement weather prevented her from returning to her residence in Columbus. Since Ms. Robinson continued to reside in the former residence during the period for which she claims TQSE, she had not vacated the former residence as required by FTR, para. 2-5.2c, quoted above. Therefore, reimbursement is denied for the 4 days in January/February 1988. See Edward Carlin, 67 Comp. Gen. 544 (1988).

TQSE from July 23 to August 22, 1988

Ms. Robinson has also submitted a claim for the temporary quarters subsistence expenses she incurred from July 23 to August 22, 1988, i.e., from the time she was obligated to vacate her former residence until she had a legal right to possession of her new residence.

The agency questions whether payment can be made for that period in light of 2 JTR para. Cl3006 (Sept. 1, 1986), which prohibits the payment of TQSE for short distance transfers. Short distance transfers are those where the distance between the new residence and the old duty station is not more than 40 miles greater than the distance between the old residence and the old duty station. We do not believe that the cited JTR provision, which is based on FTR, para. 2-5.2h, was intended to apply to situations where the sale is under one PCS order and the purchase is under another order. In those situations the timing of the sale and purchase are no longer within the employee's control.

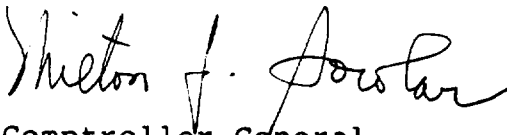
Here, Ms. Robinson contracted to sell her prior residence in Columbus under the first PCS order transferring her to Dayton before she received the second PCS order transferring her back to Columbus. The purchase of her new residence was then made pursuant to the second order. Therefore, we would not object to payment of Ms. Robinson's claim for TQSE from July 23 to August 22, 1988.

Movement and Storage of Household Goods

We have not objected to the reimbursement of employees' moving expenses in a number of cases involving relatively short distance transfers. For example, we have held that the fact that an employee's new residence is located near the former residence would not in itself preclude reimbursement of relocation expenses, so long as the employee commutes daily to his new duty station from the new residence. B-175822, June 14, 1972. Also, the fact that commuting time or distance was not decreased would not necessarily prevent reimbursement of expenses, if it could be otherwise determined that the employee's move was incident to his transfer. Gary A. Ward, 54 Comp. Gen. 751 (1975). In each particular case, the agency involved is required to consider a variety of factors surrounding the relocation, and on the basis of all such information, determine whether the relocation was truly incident to the employee's transfer. See Harvey Knowles, 58 Comp. Gen. 319 (1979). The facts in this case support a finding that the move was incident to Ms. Robinson's transfers.

Conclusion

Accordingly, Ms. Robinson's real estate expenses and household goods expenses may be reimbursed along with her temporary quarters subsistence expenses to the extent outlined above.

for 
Comptroller General
of the United States